

TO BE FILED UNDER SEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEREMY LEVIN and DR. LUCILLE LEVIN, :

09 Civ. 5900 (RPP)

Plaintiffs,

: **FILE UNDER SEAL**

-against-

BANK OF NEW YORK, et al., :

: **NOTICE OF MOTION**

Defendants.

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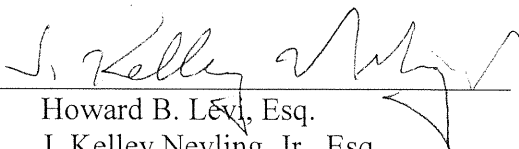
PLEASE TAKE NOTICE that on January 3, 2011, at 9:30 A.M., or as soon thereafter as the parties may be heard, or on such other date and at such other time as the Court may specify, defendant The Bank of New Mellon (“BNY Mellon”) will move this Court, in Courtroom 24A of the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10005, for the entry of an order pursuant to Rule 14 et al. of the Federal Rules of Procedure, granting leave to BNY Mellon to file and serve an additional third-party complaint in this proceeding against third-party defendant [REDACTED] (“Party B”), on the grounds that BNY Mellon has just learned that Party B is claiming to have an interest in the proceeds of one of the blocked wire transfers that is involved in Phase 1 of this proceeding and that BNY Mellon should be permitted to bring Party B before the Court and obtain interpleader and other relief against Party B pursuant to, inter alia, Rule 22 of the Federal Rules of Civil Procedure, the provisions of 28 U.S.C. §§ 1335 and 2361, section 134, subd. 6 of the New York Banking Law and sections 1006 and 5239 of the New York Civil Procedure

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Law and Rules, and for such other and further relief to BNY Mellon as may be just and proper.

Dated: New York, New York
December 9, 2010

LEVI LUBARSKY & FEIGENBAUM LLP

By: 
Howard B. Levi, Esq.
J. Kelley Nevling, Jr., Esq.
1185 Avenue of the Americas, 17th Floor
New York, NY 10036
Tel. No. (212) 308-6100
Fax No. (212) 308-8830

*Attorneys for Defendant The Bank of New
York Mellon*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEFFREY LEVIN and DR. LUCILLE LEVIN, : Civil Action No. 09 Civ. 5900
(RPP)

Plaintiffs, :

-against- :

BANK OF NEW YORK, et al., : **DECLARATION OF SERVICE**

Defendants. :

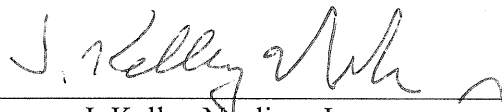
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J. KELLEY NEVLING, JR. hereby declares under penalty of perjury as follows:

1. I am over eighteen years of age and am not a party to this action. I am a resident of the State of New York.

2. On December 9, 2010, I served the annexed Notice of Motion and Declaration of J. Kelley Nevling, Jr. in Support of BNY Mellon's Motion for Leave to File Third-Party Complaint executed on December 9, 2010, in unredacted form, upon the attorneys for the parties identified on the annexed service list by depositing true copies thereof, in sealed postpaid envelopes addressed to each of those attorneys at the address reflected on the annexed service list, into an official mail depository under the custody of the United States Postal Service within the State of New York.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York on December 9, 2010.


J. Kelley Nevling, Jr.

SERVICE LIST

Howarth & Smith
523 West Sixth Street, Suite 728
Los Angeles, CA 90017
Attention: Suzelle M. Smith, Esq.

Attorneys for Plaintiffs

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
Attention: James L. Bernard, Esq.

Attorneys for Third-Party Defendants Steven
M. Greenbaum, et al. and Carlos Acosta, et al.

DLA Piper LLP
6225 Smith Avenue
Baltimore, MD 21209
Attention: Richard M. Kremen, Esq. or
Dale K. Cathell, Esq.

Attorneys for Third-Party Defendants
Estate of Michael Heiser, et al.